

SENATE FLOOR SUBSTITUTE FOR  
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 573

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE CONSUMER NO-CALL  
ACT; REGULATING TELEPHONE SOLICITATION ACTIVITIES; PROVIDING  
PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 7 of this act may be cited as the "Consumer No-Call  
Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the  
Consumer No-Call Act:

A. "caller identification service" means a  
telephone service that permits telephone subscribers to see the  
telephone number of incoming telephone calls;

B. "established business relationship" means a  
relationship that:

1 (1) was formed, prior to a telephone  
2 solicitation, through a voluntary, two-way communication  
3 between a seller or telephone solicitor and a residential  
4 subscriber, with or without consideration, on the basis of an  
5 application, purchase, ongoing contractual agreement or  
6 commercial transaction between the parties regarding products  
7 or services offered by the seller or telephone solicitor; and

8 (2) currently exists or has existed within the  
9 immediately preceding twelve months;

10 C. "local exchange area" means a geographic area  
11 encompassing one or more local communities, as described in  
12 maps, tariffs or rate schedules filed with the public  
13 regulation commission, where local exchange rates apply;

14 D. "local exchange company" means a  
15 telecommunications company that provides the transmission of  
16 two-way interactive switched voice communications within a  
17 local exchange area;

18 E. "public telecommunications service" means the  
19 transmission of signs, signals, writings, images, sounds,  
20 messages, data or other information of any nature by wire,  
21 radio, lightwaves or other electromagnetic means originating  
22 and terminating in this state regardless of actual call  
23 routing, but "public telecommunications service" does not  
24 include the provision of terminal equipment used to originate  
25 or terminate the service; private telecommunications service;

1 broadcast transmissions by radio, television and satellite  
2 broadcast stations regulated by the federal communications  
3 commission; radio common carrier services, including mobile  
4 telephone service and radio paging; or one-way cable television  
5 service;

6 F. "residential subscriber" means a person who has  
7 subscribed to residential telephone service from a local  
8 exchange company or the other persons living or residing with  
9 such person;

10 G. "telecommunications company" means a person that  
11 provides public telecommunications service; and

12 H. "telephone solicitation" means a voice or  
13 telefacsimile communication over a telephone line for the  
14 purpose of encouraging the purchase or rental of, or investment  
15 in, property, goods or services and includes a communication  
16 described in this subsection through the use of automatic  
17 dialing and recorded message equipment or by other means, but  
18 "telephone solicitation" does not include a communication:

19 (1) to a residential subscriber with that  
20 subscriber's prior express invitation or permission; or

21 (2) by or on behalf of a person with whom a  
22 residential subscriber has an established business  
23 relationship.

24 Section 3. [NEW MATERIAL] DO-NOT-CALL REGISTRY-- FEDERAL  
25 TRADE COMMISSION REGISTRY ADOPTED AS STATE REGISTRY. -- The

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underscoring material = new  
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1 national "do-not-call" registry established and maintained by  
2 the federal trade commission pursuant to 16 CFR Section  
3 310.4(b)(1)(iii)(B) is adopted and shall serve as the New  
4 Mexico do-not-call registry for the purposes of the Consumer  
5 No-Call Act.

6 Section 4. [NEW MATERIAL] PROHIBITED ACT-- CIVIL ACTION--  
7 CRIMINAL PENALTY. --

8 A. A person engaging in telephone solicitation  
9 shall not initiate an outbound telephone call consisting of  
10 telephone solicitation to a residential subscriber in New  
11 Mexico when that residential subscriber's telephone number has  
12 been on the national do-not-call registry, established by the  
13 federal trade commission, for at least three months prior to  
14 the date the call is made.

15 B. A residential subscriber may bring a civil  
16 action against a person who violates the provisions of  
17 Subsection A of this section in respect to that subscriber. A  
18 residential subscriber who succeeds in obtaining a judgment of  
19 violation shall be awarded liquidated damages in the amount of  
20 five hundred dollars (\$500) for each violation proved. Each  
21 call is a separate violation of the provisions of this section.  
22 A residential subscriber that succeeds in obtaining a judgment  
23 of violation shall be awarded reasonable attorney fees and  
24 costs by the court.

25 C. Violation of the provisions of Subsection A of

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1 this section is a misdemeanor, and the violator shall be  
2 sentenced pursuant to Section 31-19-1 NMSA 1978.

3 Section 5. [NEW MATERIAL] ATTORNEY GENERAL TO PROMULGATE  
4 RULES TO IMPLEMENT TELEPHONE SOLICITATION RESTRICTIONS. -- No  
5 later than January 1, 2004, the attorney general shall  
6 promulgate rules that specify:

7 A. the methods by which a residential subscriber  
8 may give notice to the attorney general of his objection to  
9 receiving telephone solicitations or revocation of a notice  
10 previously given;

11 B. the length of time for which a notice of  
12 objection shall be effective and the effect of a change of  
13 telephone number on the notice;

14 C. the methods by which objections and revocations  
15 shall be collected and added to the New Mexico do-not-call  
16 registry;

17 D. the methods by which a person desiring to engage  
18 in telephone solicitation may obtain access to the New Mexico  
19 do-not-call registry to avoid calling the telephone numbers of  
20 residential subscribers in New Mexico; and

21 E. methods for keeping the New Mexico do-not-call  
22 registry current and other matters relating to the registry  
23 that the attorney general deems desirable.

24 Section 6. [NEW MATERIAL] RESTRICTIONS ON USE OF  
25 REGISTRY. -- Information contained in the registry established

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1 pursuant to the Consumer No-Call Act shall be used only for the  
2 purpose of compliance with that act. The information is  
3 confidential and is not subject to public inspection or  
4 disclosure.

5 Section 7. [NEW MATERIAL] BLOCKING PROHIBITED. -- A person  
6 engaging in telephone solicitation shall not use a method to  
7 block or otherwise circumvent a residential subscriber's use of  
8 a caller identification service.

9 Section 8. Section 57-12-1 NMSA 1978 (being Laws 1967,  
10 Chapter 268, Section 1) is amended to read:

11 "57-12-1. SHORT TITLE. -- [~~This act~~] Chapter 57, Article 12  
12 NMSA 1978 may be cited as the "Unfair Practices Act". "

13 Section 9. Section 57-12-2 NMSA 1978 (being Laws 1967,  
14 Chapter 268, Section 2, as amended) is amended to read:

15 "57-12-2. DEFINITIONS. -- As used in the Unfair Practices  
16 Act:

17 A. "person" [~~includes~~] means, where applicable,  
18 natural persons, corporations, trusts, partnerships,  
19 associations, cooperative associations, clubs, companies,  
20 firms, joint ventures or syndicates;

21 B. "seller-initiated telephone sale" means a sale,  
22 lease or rental of goods or services in which the seller or his  
23 representative solicits the sale by telephoning the prospective  
24 purchaser and in which the sale is consummated entirely by  
25 telephone or mail, but does not include a transaction:

1 (1) in which a person solicits a sale from a  
2 prospective purchaser who has previously made an authorized  
3 purchase from the seller's business; or

4 (2) in which the purchaser is accorded the  
5 right of rescission by the provisions of the federal Consumer  
6 Credit Protection Act, 15 U. S. C. 1635 or regulations issued  
7 pursuant thereto;

8 C. "trade" or "commerce" includes the advertising,  
9 offering for sale or distribution of any services and any  
10 property and any other article, commodity or thing of value,  
11 including any trade or commerce directly or indirectly  
12 affecting the people of this state;

13 D. "unfair or deceptive trade practice" means [~~any~~]  
14 an act specifically declared unlawful pursuant to the Unfair  
15 Practices Act, a false or misleading oral or written statement,  
16 visual description or other representation of any kind  
17 knowingly made in connection with the sale, lease, rental or  
18 loan of goods or services or in the extension of credit or in  
19 the collection of debts by [~~any~~] a person in the regular course  
20 of his trade or commerce, which may, tends to or does deceive  
21 or mislead any person and includes [~~but is not limited to~~]:

22 (1) representing goods or services as those of  
23 another when the goods or services are not the goods or  
24 services of another;

25 (2) causing confusion or misunderstanding as

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1 to the source, sponsorship, approval or certification of goods  
2 or services;

3 (3) causing confusion or misunderstanding as  
4 to affiliation, connection or association with or certification  
5 by another;

6 (4) using deceptive representations or  
7 designations of geographic origin in connection with goods or  
8 services;

9 (5) representing that goods or services have  
10 sponsorship, approval, characteristics, ingredients, uses,  
11 benefits or quantities that they do not have or that a person  
12 has a sponsorship, approval, status, affiliation or connection  
13 that he does not have;

14 (6) representing that goods are original or  
15 new if they are deteriorated, altered, reconditioned,  
16 reclaimed, used or secondhand;

17 (7) representing that goods or services are of  
18 a particular standard, quality or grade or that goods are of a  
19 particular style or model if they are of another;

20 (8) disparaging the goods, services or  
21 business of another by false or misleading representations;

22 (9) offering goods or services with intent not  
23 to supply them in the quantity requested by the prospective  
24 buyer to the extent of the stock available, unless the  
25 purchaser is purchasing for resale;

1 (10) offering goods or services with intent  
2 not to supply reasonable expectable public demand;

3 (11) making false or misleading statements of  
4 fact concerning the price of goods or services, the prices of  
5 competitors or one's own price at a past or future time or the  
6 reasons for, existence of or amounts of price reduction;

7 (12) making false or misleading statements of  
8 fact for the purpose of obtaining appointments for the  
9 demonstration, exhibition or other sales presentation of goods  
10 or services;

11 (13) packaging goods for sale in a container  
12 that bears a trademark or trade name identified with goods  
13 formerly packaged in the container, without authorization,  
14 unless the container is labeled or marked to disclaim a  
15 connection between the contents and the trademark or trade  
16 name;

17 (14) using exaggeration, innuendo or ambiguity  
18 as to a material fact or failing to state a material fact if  
19 doing so deceives or tends to deceive;

20 (15) stating that a transaction involves  
21 rights, remedies or obligations that it does not involve;

22 (16) stating that services, replacements or  
23 repairs are needed if they are not needed; or

24 (17) failure to deliver the quality or  
25 quantity of goods or services contracted for; and

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1 E. "unconscionable trade practice" means [~~any~~] an  
2 act or practice in connection with the sale, lease, rental or  
3 loan, or in connection with the offering for sale, lease,  
4 rental or loan, of any goods or services, including services  
5 provided by licensed professionals, or in the extension of  
6 credit or in the collection of debts which to a person's  
7 detriment:

8 (1) takes advantage of the lack of knowledge,  
9 ability, experience or capacity of a person to a grossly unfair  
10 degree; or

11 (2) results in a gross disparity between the  
12 value received by a person and the price paid. "

13 Section 10. Section 57-12-22 NMSA 1978 (being Laws 1989,  
14 Chapter 309, Section 2) is amended to read:

15 "57-12-22. TELEPHONE SOLICITATION SALES--AUTOMATED  
16 TELEPHONE DIALING SYSTEMS FOR SALES RESTRICTED--DISCLOSURE AND  
17 OTHER REQUIREMENTS ESTABLISHED FOR AUTHORIZED TELEPHONE  
18 SOLICITATION SALES--PROHIBITED TELEPHONE SOLICITATION.--

19 A. A person shall not utilize an automated  
20 telephone dialing or push-button or tone-activated address  
21 signaling system with a prerecorded message to solicit persons  
22 to purchase goods or services unless there is an [~~existing~~]  
23 established business relationship between [~~such~~] the persons  
24 and the person being called consents to hear the prerecorded  
25 message.

1           B. It is unlawful under the Unfair Practices Act  
2 for ~~[any]~~ a person to ~~[solicit by means of a seller-initiated~~  
3 ~~telephone sale]~~ make a telephone solicitation for a purchase of  
4 goods or services:

5                   (1) without ~~[promptly]~~ disclosing within  
6 fifteen seconds of the time the person being called answers the  
7 name of the sponsor and the primary purpose ~~[or purposes]~~ of  
8 the contact;

9                   (2) that misrepresents the primary purpose of  
10 a telephone solicitation of a residential subscriber as a  
11 "courtesy call", a "public service information call" or some  
12 other euphemism;

13                   ~~[(2) in which offers or solicitations in]~~

14                   (3) under the guise of research or a survey  
15 ~~[are made]~~ when the real intent is to sell goods or services;

16                   ~~[(3)]~~ (4) without disclosing, prior to  
17 commitments by customers, the cost of the goods or services,  
18 all terms, conditions, payment plans and the amount or  
19 existence of any extra charges such as shipping and handling;

20                   ~~[(4) which]~~ (5) that are received before 9:00  
21 a. m. or after 9:00 p. m. ;

22                   ~~[(5)]~~ (6) using automatic dialing equipment  
23 unless the telephone immediately releases the line when the  
24 called party disconnects; ~~[and~~

25                   ~~(6) asking for credit card numbers until and~~

1 ~~unless the customer has committed to make the purchase and~~  
2 ~~expressed a desire to use a credit card to pay for the~~  
3 ~~purchase]~~

4 (7) using automatic dialing equipment that  
5 dials and engages the telephone numbers of more than one person  
6 at a time but allows the possibility of a called person not  
7 being connected to the calling person; and

8 (8) in which credit card numbers are requested  
9 before the prospective purchaser expresses a desire to use a  
10 credit card to pay for the purchase.

11 C. It is unlawful for a person to:

12 (1) make a telephone solicitation of a  
13 residential subscriber whose telephone number has been on the  
14 national do-not-call registry, established by the federal trade  
15 commission, for at least three months prior to the date the  
16 call is made; or

17 (2) use a method to block or otherwise  
18 circumvent a residential subscriber's use of a caller  
19 identification service pursuant to the Consumer No-Call Act.

20 D. As used in this section:

21 (1) "established business relationship" means  
22 a relationship that:

23 (a) was formed, prior to a telephone  
24 solicitation, through a voluntary, two-way communication  
25 between a seller or telephone solicitor and a residential

1 subscriber, with or without consideration, on the basis of an  
2 application, purchase, ongoing contractual agreement or  
3 commercial transaction between the parties regarding products  
4 or services offered by the seller or telephone solicitor; and

5 (b) currently exists or has existed  
6 within the immediately preceding twelve months;

7 (2) "local exchange company" means a  
8 telecommunications company that provides the transmission of  
9 two-way interactive switched voice communications within a  
10 local exchange area;

11 (3) "residential subscriber" means a person  
12 who has subscribed to residential telephone service from a  
13 local exchange company or the other persons living or residing  
14 with such person; and

15 (4) "telephone solicitation" means a voice or  
16 telefacsimile communication over a telephone line for the  
17 purpose of encouraging the purchase or rental of or investment  
18 in property, goods or services and includes a communication  
19 described in this subsection through the use of automatic  
20 dialing and recorded message equipment or by other means, but  
21 "telephone solicitation" does not include a communication:

22 (a) to a residential subscriber with that  
23 subscriber's prior express invitation or permission; or

24 (b) by or on behalf of a person with whom  
25 a residential subscriber has an established business

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1 relationship. "

2 Section 11. CONTINGENT REPEAL. --Sections 1 through 7 of  
3 this act are repealed on the date that a federal do-not-call  
4 rule adopted by the federal communications commission is  
5 effective.

6 Section 12. EFFECTIVE DATE. --The effective date of the  
7 provisions of this act is July 1, 2003.

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